

**Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201**

Department of the Treasury

**Number: 201302044
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Employer Identification Number:

Contact Person - ID Number:

Date: October 19, 2012

Contact Telephone Number:

LEGEND

UIL: 4942.03-07

B=State
x dollars= Amount
y dollars= Amount
z dollars= Amount

Dear _____ :

Why you are receiving this letter

This is our response to your June 7, 2012, letter requesting approval of a set-aside under Internal Revenue Code section 4942(g)(2). You've been recognized as tax-exempt under section 501(c)(3) of the Code and have been determined to be a private operating foundation under sections 509(a) and 4942(j)(3).

Our determination

Based on the information furnished, your set-aside program is approved under Internal Revenue Code section 4942(g)(2). As required under section 4942(g)(2), the set aside amount must be paid within the 60-month period after the date of the first set-aside.

Description of set-aside request

You were formed in the state of B to provide educational, social networking, recreational and wellness programs for seniors in your community. You have requested approval of a set-aside of funds in the amount of x dollars for the tax year ending June 30, 20 .

There are over 5000 adults over the age of 65 in your community and you currently share space with the city Parks and Recreation Department. Because of lack of space, you have limited programs and limited hours.

You intend to renovate and occupy a 4,000 to 5,000 square foot property in order to provide a full service Senior Center within the city accessible by public transportation. The proposed facility's location is also very convenient for seniors because of its close proximity to other entities that support wellness and healthy

aging.

Your set-aside request includes y dollars in facility fit up costs and a total of z dollars for initial program expansion resulting from your new facility and more available space. This includes community investment projects, hiring of additional staff, information technology, and miscellaneous program expenses, such as class supplies, satellite space rental, and additional instructor fees. Funds for the facility fit up and new program costs had been reserved during the fiscal year ending June 30, 20 , in the expectation that they would be disbursed before the end of the year, after you had occupied a larger facility. However, the accumulated funds could not be disbursed because you were prevented from occupying a new facility when a deal you had negotiated for a different property fell through. The reserved funds will now be expended for the same purposes in the fiscal year ending June 30, 20 , when you have completed the necessary renovations and occupied the facility described above.

Basis for our determination

Internal Revenue Code section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in section 170(c)(2)(B), may be treated as a qualifying distribution if it meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B) of the Code states that an amount set aside for a specific project will meet the requirements of this subparagraph if, at the time of the set-aside, the foundation establishes that the amount will be paid within five years and either clause (i) or (ii) are satisfied.

Section 4942(g)(2)(B)(i) of the Code is satisfied if, at the time of the set-aside, the private foundation establishes that the project can better be accomplished using the set-aside than by making an immediate payment.

Section 4942(j)(3) of the Code requires that private operating foundations must spend at least 85% of its adjusted net income or its minimum investment return, whichever is less, directly for the active conduct of its exempt activities (the income test) in order to remain a private operating foundation.

Section 53.4942(a)-3(b)(1) of the Foundations and Similar Excise Taxes Regulations provides that a private foundation may establish a project as better accomplished by a set-aside than by immediate payment if the set-aside satisfies the suitability test described in section 53.4942(a)-3(b)(2).

Section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes Regulations provides that specific projects better accomplished using a set-aside include, but are not limited to, projects where relatively long-term expenditures must be made requiring more than one year's income to assure their continuity.

In Revenue Ruling 74-450, 1974-2 C.B. 388, an operating foundation converted a portion of newly acquired land into a public park under a four-year construction

contract. The construction contract payments were to be made mainly during the final two years. This constituted a "specific project." The foundation's set-aside of all its excess earnings for four years was treated as a qualifying distribution under Internal Revenue Code section 4942(g)(2).

You sought timely approval of your set-aside of income in accordance with section 53.4942(a)-3(b)(7)(i).

As required by section 4942(g)(2)(A) of the Code and section 53.4942(a)-3(b)(1) of the Regulations, your proposed set-aside will be used to accomplish purposes described in section 170(c)(2)(B) of the Code, namely to renovate a facility for a conveniently located senior center.

The funds set aside will be expended for a project which is a "specific project" within the meaning of section 53.4942(a)-3(b)(2), namely, to fund renovations and expanded operations for a facility to be used as a senior center. Your project resembles that described in Revenue Ruling 74-450, which involved the construction and maintenance of a public work, to wit, a public park.

Your project can be better accomplished by a set-aside rather than an immediate payment of funds. In the language used by section 53.4942(a)-3(b)(2) of the Regulations, your specific project is "one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects." The cost of the project far exceeds what you are normally capable of distributing in any given year.

You had a reasonable expectation that you would move into a new facility before June 30, 2012, and had been limiting your qualifying distributions so that you could accumulate enough income to pay for the fit up and the expansion of your programs once you occupied the new leasehold. Through circumstances beyond your control, you were prevented from occupying a new facility and distributing the reserved funds by that date. Without making qualifying distributions in the amount of the set aside in the fiscal year ending June 30, 20 , you will not be able to maintain your status as a private operating foundation described in Section 4942(j)(3). However, to make qualified disbursements unrelated to the project before that date would increase the burden of the project in following years, when you would not be able to accumulate income, all of your income being dedicated to the ordinary recurring costs of operating the new facility and conducting its expanded programs. Your project therefore satisfies the suitability test as set forth in section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the Regulations.

What you must do

Your approved set-aside(s) will be documented on your records as pledges or obligations to be paid by the date specified. The amounts set aside will be taken into account to determine your minimum investment return under Internal Revenue

Code section 4942(e)(1)(A), and the income attributable to your set aside(s) will also be taken into account in computing your adjusted net income under section 4942(f) of the Code.

Additional information

This determination is directed only to the organization that requested it. Internal Revenue Code section 6110(k)(3) provides that it may not be used or cited as a precedent.

Please keep a copy of this letter in your records.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely yours,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure